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CHARLES ELMO

Supreme Court of the United States

OCTOBER TERM, 1931

SEABOARD AIR LINE RAILWAY COMPANY, a Corporation,
APPELLANT,
vs.
A. W. WATSON,
APPELLEE.

No. [redacted] 4

Statement of Basis on Which Appellant Contends the Supreme Court of the United States Has Jurisdiction to Review on Appeal the Judgment Appealed From, as Required by Supreme Court Rule 12

W. J. OVEN,
Counsel for Appellant.

Dated February 29, A. D. 1932.

Artcraft Printers, Tallahassee, Florida

Supreme Court of the United States

OCTOBER TERM, 1931

SEABOARD AIR LINE RAILWAY COMPANY, a Corporation,
APPELLANT,
vs.
A. W. WATSON,
APPELLEE.

No. 706

Statement of Basis on Which Appellant Contends the Supreme Court of the United States Has Jurisdiction to Review on Appeal the Judgment Appealed From, as Required by Supreme Court Rule 12

Pursuant to Supreme Court Rule 12, Par. 1, Seaboard Air Line Railway Company, a corporation, the above appellant, files this its statement showing the basis on which said appellant contends that the Supreme Court has appellate jurisdiction to review on appeal the judgment appealed from herein, as follows:

I. The statute believed to sustain appellate jurisdiction is Section 237, the Judicial Code (United States Code Annotated Title 28, Section 344), as amended by the

Act of February 13, A. D. 1925, Ch. 229, 43 Stat. 937, which provides:

> "A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any state, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States." As modified or amended by the Act of January 31, 1928, Chapter 14, 45 Stat. 54, as amended by the Act of April 26, 1928, Ch. 440, 45 Stat. 466, abolishing writs of error in civil cases and providing that all relief which heretofore could be obtained by writ of error should hereafter be obtained by appeal.

II. The judgment or decree appealed from was entered by the Circuit Court of Gadsden County, Florida, March 22, A. D. 1929 (Record pages 10-11*) and affirmed by the said Supreme Court of Florida, upon remittitur, November 12, A. D. 1931 (Record page 87) and rehearing denied January 5th, A. D. 1932. (Record page 94.)

III. The application for an appeal was presented on the 22nd day of January, A. D. 1932, as appears from

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* NOTE.—Paging refers to typewritten transcript—Record not yet printed.

pages 95-98 of the Record herein, and appeal allowed on the same date by the Chief Justice of the Supreme Court of Florida, as appears from pages 109-110 of the Record herein.

IV. The appeal herein is from a judgment of the Supreme Court of the State of Florida, entered November 12th, A. D. 1931 (Record p. 87), in a civil case at law (rehearing denied January 5, A. D. 1932, Record p. 94), affirming conditionally on remittitur a judgment rendered against appellant March 22nd, A. D. 1929, by the Circuit Court of the Second Judicial Circuit of Florida, in and for Gadsden County. (Record pages 10-11.)

V. Appellant contends that the nature of the case and of the rulings below are such as to bring the case within the jurisdictional provisions relied on in this:

(a) Section 7051, Compiled General Laws of Florida, 1927 (Section 4964, Revised General Statutes of Florida, 1920), which provides:

> "A railroad company shall be liable for any damage done to persons, stock or other property, by the running of the locomotives, or cars, or other machinery of such company, or for damage done by any person in the employ and service of such company, unless the company shall make it appear that their agents have exercised all ordinary and reasonable care and diligence, the presumption in all cases being against the company,"

is void and repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States. See testimony Record pages 13-15, 24-51; charges of the trial court, Record pages 51-57; motion for new trial, grounds

Nos. 5 to 12, Record pages 58-61; assignments of error before Supreme Court of Florida, Nos. 5 to 12, Record 69-71; assignment of error here, No. 1, Record page 100.

(b) That the application of the Florida statute quoted above to the issues in the case under the evidence submitted deprived the appellant here of its property without due process of law and denied to it the equal protection of the laws guaranteed to it by the Fourteenth Amendment to the Constitution of the United States. (Same pages of the record as preceding paragraph; second assignment of error here, Record p. 100.)

(c) That the Florida Statute quoted above denies to appellant the equal protection of the law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States because the presumption cast upon it, a railroad company, by the statute, is not likewise cast upon auto transportation companies in handling passengers and goods for hire over the public roads of the State of Florida. (Testimony Record pages 34-35.) See 5th to 12th grounds of motion for new trial (Record pages 58-61); 5th to 12th assignments of error (Record pages 69-71); opinion of the Supreme Court of Florida (Record pages 84-85); third assignment of error here (Record page 101.)

(d) The several charges of the Circuit Court to the jury sustained by the Supreme Court of Florida, being severally set forth in the fifth, sixth, seventh, eighth and ninth assignments of error here (Record pages 101-104), and severally the fifth, sixth, seventh, eighth and ninth assignments of error before the Supreme Court of Florida, and being severally the fifth, sixth, seventh, eighth and

ninth grounds of appellant's (defendant below) motion for a new trial, denied to the appellant the equal protection of the law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States. See tesimony, record pages 13-15, 24-51; charges, record pages 51-57; motion for new trial, grounds 5 to 12, record pages 58-61; assignments of error before the Supreme Court of Florida, Nos. 5 to 12, record 69-71.

(e) The appellant was denied due process of law and the equal protection of the law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States by the refusal of the trial Court to give the charge requested by appellant (defendant there) made the basis of the tenth ground of the motion for a new trial in the trial court, and made the basis of the tenth assignment of error in the Supreme Court of Florida, and the basis of the tenth assignment of error here. See testimony record pages 13-15, 24-51; second charge requested, record pages 55-56; tenth ground of motion for new trial, record page 61; tenth assignment of error in the Supreme Court of Florida, record page 71; tenth assignment of error here, record pages 104-105.

(f) The appellant (defendant in the trial court) was denied due process of law and the equal protection of the law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States by the refusal of the trial court to give the charge made the basis of the eleventh ground of its motion for a new trial and the basis of the eleventh assignment of error in the Supreme Court of Florida, and the basis of the eleventh assignment of error here. (Same testimony as above); third charge requested, record pages 56-57; motion for new

trial, record page 61; eleventh assignment of error in the Supreme Court of Florida, record page 71; eleventh assignment of error here, record pages 105-106.

(g) The opinion and decision of the Supreme Court of Florida, construing the Florida Statute quoted above to be similar in operation to the Mississippi Statute construed by the Supreme Court of the United States in the case of Mobile, Jackson & Kansas City Railroad Company vs. J. A. Turnipseed (219 U. S. 35, 31 Sup. Ct. Rep. 156; 55 L. Ed. 78), and by so holding therein that the trial court committed no reversible error in giving the instructions made the basis of the fifth, sixth, seventh, eighth and ninth grounds severally of the motion for a new trial, and the basis of the fifth, sixth, seventh, eighth and ninth assignments of error severally in the Supreme Court of Florida, denied to the appellant here the equal protection of the law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States in this: That with the construction placed upon the Mississippi Statute by this Court and later by the Mississippi Court itself, pursuant to later decisions of this Court, the prima facie rule of evidence obtaining against this defendant in the trial court was met and removed by the testimony of this appellant's employees and the case then became lawfully one for the jury as to the credibility of the witnesses without presumption of any kind; whereas, the jury, by each of the several charges of the trial court and the charge as a whole, took the case to the jury room under such charges with the burden still resting upon the shoulders of the appellant (defendant below) of overcoming the statutory presumption as charged by the trial court. Testimony, record pages 13-15, 24-51; charges, record pages 51-57; motion for

new trial, grounds 5 to 12, record pages 58-61; assignments of error before Supreme Court of Florida, Nos. 5 to 12, record pages 69-71; petition for rehearing before Supreme Court of Florida, record pages 91-94; twelfth assignment of error here, record pages 106-107. See opinion S. A. L. vs. Watson, 137 So. 719, Advance Sheet No. 6, Dec. 24, 1931.

The cases believed to sustain the jurisdiction are as follows:

Western & Atlantic Railroad vs. Henderson, et al., 279 U. S. 639, 49 Sup. Ct. Rep. 445, 73 L. Ed. 884.

Manley vs. Georgia, 279 U. S. 1, 49 Sup. Ct. Rep. 215, 73 L. Ed. 575.

Bailey vs. Alabama, 219 U. S. 219, 31 Sup. Ct. Rep. 145, 55 L. Ed. 191.

New Orleans & G. N. R. Co. vs. Walden, ... Miss....., 133 So. 241.

Abie State Bank vs. Bryan, 282 U. S. 765, 51 Sup. Ct. Rep. 252, 75 L. Ed. 690.

Seaboard Air Line Ry. vs. Simon, 56 Fla. 545, 47 So. 1001.

Smith vs. Cahoon, 283 U. S. 553, 51 Sup. Ct. Rep. 582, 75 L. Ed. 1264.

Truax vs. Corrigan, 257 U. S. 312, 42 Sup. Ct. Rep. 124, 66 L. Ed. 254.

Gulf C. & S. F. R. Co. vs. Ellis, 165 U. S. 150, 17 Sup. Ct. Rep. 255, 41 L. Ed. 666.

Southern Cotton Oil Co. vs. Anderson, 80 Fla. 441, 86 So. 629.

City of Tallahassee vs. Kaufman, 87 Fla. 119, 100 So. 140.

Maxwell vs. Miami, 87 Fla. 107, 100 So. 147.

Respectfully submitted,

W. J. OVEN,
Counsel for Appellant.

Dated February 29, A. D. 1932.

Service of a copy of the above statement is hereby admitted, this the 29th day of February, A. D. 1932.

HUGH M. TAYLOR,
Attorney and of Counsel for Appellee.